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Land Use Action Date: October 18, 2005
Board of Aldermen Action Date: November 21, 2005
90-Day Expiration Date: December 12, 2005

TO: Board of Aldermen

FROM: Michael Kruse, Director of Planning and Development
Nancy Radzevich, Chief Planner
Jean Fulkerson, Principal Planner

DATE: September 9, 2005

SUBJECT: Petition #266-05 BRUNO DiFAZIO, TRUSTEE OF BRUNO DiFAZIO REALTY TRUST petition to AMEND SITE PLAN/SPECIAL PERMIT #420-87 in order to construct a canopy over a pump island at an existing gasoline selling station at 50 & 56 WINCHESTER STREET, Ward 8, on land known as Sec 83, Blk 3, Lots 44 & 45, containing approximately 33,315 sf of a land in a district zoned MULTI RESIDENCE 1.

CC: Mayor David B. Cohen

The purpose of this memorandum is to provide the Board of Aldermen and the public with technical information and planning analysis which may be useful in the special permit decision making process of the Board of Aldermen. The Planning Department's intention is to provide a balanced view of the issues with the information it has at the time of the public hearing. There may be other information that will be presented at or after the public hearing that the Land Use Committee will consider in its discussion at a subsequent Working Session.

EXECUTIVE SUMMARY

The petitioner is requesting a special permit for a canopy with lighting over the pump island at an existing gasoline service station located in an MU-2 Zone. In addition to the canopy, the petitioner is seeking to legalize existing conditions at the site, which are in conflict with the existing Board Order, and which will require waivers from the Zoning Ordinance.

I. BACKGROUND

The existing gas station at 50 Winchester Street is a full-serve station with six pumps on the single pumping island. The hours of operation are 6:00 AM to 10:00 PM Monday through Saturday, and 7:00 AM to 10:00 PM on Sunday. The property was approved for the current pump station and kiosk in 1988 under Board Order #420-87 (*See ATTACHMENT "A"*). The 1988 Board Order also approved a free-standing sign, and placed certain conditions on the gas station. These conditions included approval by the Director of Planning and Development of the Site Plan and Lighting and Landscape Plan. More specifically, the Board Order required the pumphouse (employee kiosk) to be located outside the setback areas, fencing surrounding the gas station, and a landscaped area of at least five feet between the station and adjacent parking lot.

II. ELEMENTS OF THE PETITION

The petitioner is requesting an amendment to his special permit in order to install a canopy over the pump island, with lights built into the underside of the canopy. Because of the small size of the existing gas station site there is a need to regulate the movement of customers in the station, in order to expedite the time which vehicles spend at the pump. The petitioner is proposing the canopy to provide protection from the weather for the employee while he is pumping gasoline and managing traffic on-site. The canopy will not carry any signage.

In addition, the petitioner is seeking to legalize certain conditions at the station that are not in compliance with Board Order #420-87, which first occurred shortly after the renovation of the site in 1988. The petitioner states that since he first purchased the station in 1981, the fuel truck has backed into the station and parked with the driver's cab facing Winchester Street. In 1988 the length of the fuel delivery tankers increased to such an extent that they could no longer fit into the gas station. The petitioner has tried to accommodate the rear of the delivery truck via an illegal pass-through to the main parking lot, which services the adjacent office and retail uses.

The petitioner is seeking to legalize the pass-through, which the Chief Zoning Code Official has determined will require waivers from the parking requirements for the removal of curbing, a reduction in the amount of the interior landscaping, and to allow two parking spaces be to temporarily unavailable. The pass-through also requires an amendment to Board Order #420-87 for removal of part of the fence, and changes to the approved site and landscape plans.

III. ZONING RELIEF BEING SOUGHT

Based on the Chief Zoning Code Official's written determination, dated July 28, 2005 (See ATTACHMENT "B"), the petitioner is seeking relief from or approvals through the following sections of the Zoning Ordinance:

- *Section 30-13(d)(13), and Section 30-24 allows the Board to grant a special permit to allow for approval of a gas station in a Mixed Use 2 Zone. The petitioner is*

proposing to install a canopy over the pump island at this existing gas station, necessitating an amendment to Board Order #420-87.

- *Section 30-23, allows the Board to approve a revised Site Plan, a revised landscape plan, and a revised lighting plan, previously approved per Board Order #420-87.*
- *Section 30-19 (m) allows the Board to grant the following waivers to the parking requirements:*
 - *Section 30-19(h)(5)a waiver to allow parking facility design, which will make two parking spaces temporarily unavailable during refueling operations;*
 - *Section 30-19(i)(2) waiver to reduce interior landscaping to 4.12%;*
 - *Section 30-19(j)(1)b) waiver to allow light spillover cause by proposed canopy lighting; and*
 - *Section 30-19(j)(2)e) waiver to allow one space without curb stops to accommodate refueling tanker operations.*

IV. SIGNIFICANT ISSUES FOR CONSIDERATION

In reviewing this petition, the Board of Aldermen should consider the following:

- *Whether the proposed canopy and parking waivers, will have an adverse effect on the surrounding residential, office, and retail uses;*
- *Whether the proposed waivers from the lighting requirements will have an adverse effect on the abutting properties and/or the surrounding neighborhood; and*
- *Whether the proposed parking waivers will pose a safety hazard to the adjacent properties, or cause vehicular or pedestrian conflicts.*

V. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

A. Existing Site Conditions

The 33,202 sq. ft. subject property is located at 50 Winchester Street in a Mixed Use 2 Zone between Route 9 and Needham Street. In addition to the gas station, the site consists of a one-story retail and office building with parking underneath in the rear, and an existing surface parking lot with 32 parking spaces. The retail/office portion of the site is accessed from a curb cut on Winchester Street, or from the rear via Upland Avenue (*unimproved*). The gas station itself is accessed from curb cuts on Winchester Street, and was originally approved with no vehicular connection to the retail/office parking area.



SUBJECT SITE VIEWED FROM ACROSS WINCHESTER ST.

B. Neighborhood

The site is located in a congested area of Newton Highlands between Route 9 and Needham Street. The Newton Highlands Playground is located to the east of the property, and a three-family dwelling is immediately north of the site. Across Winchester Street is a two-story office building, and on Curtis Street, a two-family dwelling and the Victorian Montessori School.

The 25% design plans for the reconstruction of Winchester Street and Needham Street were recently approved by the Board of Aldermen (**ATTACHMENT "C" – PARTIAL PLAN**). At the time of reconstruction, curb cuts may be adjusted and street trees added along Winchester Street.

VI. TECHNICAL REVIEW

A. Dimensional Controls (Section 30-15)

The following chart illustrates how the proposed canopy meets the dimensional requirements in the Mixed Use District:

50 Winchester Street	Ordinance	Existing	Proposed
Min. Lot Size	10,000 s.f.	33,202 s.f.	33,202 s.f.
Setbacks			
Front	Avg. rule .	5.8 .ft. avg.	5.8 ft.
Side	7.5 ft.	8.4ft.	8.4ft.
Rear	0ft.	NA.	NA
Max. Bldg. Height	24 ft.	Unknown	17.65 ft.
Max. Bldg. Lot Coverage	NA	35.79 %	40.82 %

As shown in the table above, the subject site meets all the dimensional requirements. The canopy itself measures 19 ft. wide by 36 ft. long and will be just over 17 ft. in height.

B. Parking Requirements (Section 30-19)

As previously noted, in order to accommodate the larger tanker trucks that have been used since the late 1980s, the petitioner is seeking waivers to the parking requirements in order to legalize a “pass-through” encroachment into the parking area for the adjacent retail and office uses.

In order to legalize the pass-through, the petitioner is seeking a waiver to allow two parking spaces in the adjacent lot to be temporarily unavailable during refueling operations. In addition, in order to accommodate the larger tanker trucks, the petitioner is seeking a waiver to allow one of these spaces to be without a curb stop. The pass-through is currently controlled by a rope, which is unhooked by the gas station employee on duty when a tanker truck arrives during the business hours of the gas station, or by the tanker driver if refueling occurs after business hours.

The submitted “Landscape Plan” proposes to remove a portion of the previously approved interior landscaping islands to accommodate the tanker truck pass-through. A statement provided by the applicant prepared by Verne T. Porter, Jr., Professional Land Surveyor, indicates the area of interior landscaping will be reduced by 126 sq. ft. in the proposed layout, reducing the percentage of landscaping from 4.49% to 4.12%, *a figure below the 5% required of parking facilities*. As noted, the landscaping is already altered to accommodate the larger tanker trucks.

A search by the Planning Department revealed only the most basic concept for a landscape plan for the 1988 Board Order. Neither the Planning Department, nor the petitioner, were able to locate an illustrative landscape plan that would be suitable for comparing the proposed landscape plan with what was approved and installed per Board Order #420-87.

While the area devoted to landscaping on the proposed plan is below the 5% required by ordinance, ***based on a recent site visit by the Planning Department to compare existing conditions*** to the proposed plan, the petitioner is intending to add

more plant material. Furthermore, as suggested by the City's Senior Environmental Planner, all of proposed plantings will be of native variety. The proposed landscape plan also shows that an existing rail fence will be shifted from the middle of the island over to one side, which will allow for some larger plant materials to be installed. The proposed plan appears to be an improvement over the existing conditions.

The submitted "Lighting Proposal" plan indicates lighting spillage onto the sidewalk and Winchester Street right-of-way. The proposed amount of spillover, which ranges from 5.4 footcandles up to 11.2 footcandles, is significant, especially given the residential use immediately adjacent to the subject property. The lighting plan also shows 0.3 foot candles at the property line where it should show 0.0 footcandles. Finally, the lighting plan shows two wall mounted lights being added to the east face of the retail building. While not specifically prohibited, the Planning Department discourages wall mounted lights that might result in light shining onto adjacent properties.

At pre-filing discussions, the Planning Department staff had expressed concern that two existing light fixtures which serve this site are placed on two utility poles near the respective entry drives have not been removed. These lights are illegal and should be removed immediately, regardless of the Board's decision on this petition.

C. Relevant Site Plan Approval Criteria

1. Convenience and safety of vehicular and pedestrian movement within the site.

Installation of the canopy and removal of curbing will not improve the convenience and safety of vehicles and pedestrians moving within the site; it will improve the convenience of operating the business at the site. The petitioner states that the canopy is for the protection of the employee, though an enclosed kiosk already provides ample protection to the employee, and it is not necessary for customers to leave their vehicles for service.

The subject property includes both this full-service gasoline service station and a commercial area, which includes office and retail uses. As previously noted, the petitioner is seeking waivers from the parking requirements to allow for the temporary removal of two parking spaces and the removal of one curb stop in order to legalize a "pass-through" for the larger tanker trucks.

The petitioner has stated that fuel deliveries occur every three days regardless of the day of the week and occur either before 9:00 AM or after 6:00 PM, when the surrounding retail and office uses are not open. According to the petitioner, the time of day of the last ten deliveries, as of August 25, 2005, were as follows: 10:00 PM, 2:00 AM, 2:30 AM, 4:00 AM, 8:00 PM, 5:00 AM, 7:30 PM, 7:00 PM, 9:55 PM, and 7:15 PM.

Based on photos submitted by the petitioner and a site visit by the Planning Department it appears, given the existing mix of uses on site, that the temporary removal of two parking spaces should not adversely impact the parking on site. Conflicts should occur only if a delivery is made between 9:00 AM and 6:00 PM, or, if the tenancy should change in the adjacent commercial building. If a more intensive use should occupy the retail/office building, particularly one that requires parking in the evening, then a temporary reduction in available parking on site may be a problem in the future. The owner of the property will need to consider potential conflicts as changes in tenancy occur.

Although the petitioner has stated that deliveries occur before 9:00 AM or after 6:00 PM, the Board should consider including such a condition in the Board Order, if this petition is approved, to specifically restrict the hours of deliveries. Such a condition would further guarantee that the stated delivery hours are continued by this and any future property owners.

2. Provision for off-street loading and unloading of vehicles incidental to the servicing of the buildings and related uses on the site

As a result of the small size of the existing gas station site, the petitioner is faced with a situation where the station is unable to accommodate the size of the larger tanker trucks that service that station.

As previously noted, in 1988, the length of the fuel delivery tankers increased to such an extent that they could no longer fit onto the portion of the site dedicated to the gas station use. As such, the rear of the delivery truck has been accommodated via an illegal pass-through to the main parking lot, which services the adjacent office and retail uses. The petitioner states that a chain is hung across the pass-through and only opened for refueling. If the delivery truck arrives during the operating hours of the gas station, then the gas station employee assists by stopping any traffic on Winchester Street so the truck can back into the station. Deliveries outside of the gas station operating hours occur during periods of low traffic volume. The petitioner believes this system is the safest and best alternative for fuel deliveries and, as such, is seeking to legalize this practice with this current petition.

3. Screening of parking areas and structures on the site from adjoining premises or from the street by walls, fences, plantings, or other means.

It is not easily determined to what extent the existing landscaping meets the requirements of the 1988 Board Order, or how the proposed landscape plan would alter what was approved. Although the area of the site devoted to landscaping will be reduced, the proposed landscape plan appears to improve the existing landscape conditions; by adding more plant material, all native species, and incorporating larger plant materials, which should help screen the site.

4. Consideration of the site design, including the location and configuration of structures.

The Planning Department is concerned that the proposed canopy appears to be excessive for the site. The proposed canopy also appears to be overlit. A canopy of the same size would be appropriate at a larger gasoline service station site, or one that is geared towards self-service operations.

D. Relevant Special Permit Criteria

1. The specific site is an appropriate location for such use/structure.

While it is laudable to want to provide the employee of the gas station with protection from the weather, the canopy itself appears to be oversized for its stated purpose. Further, it appears that its size may be an incentive for this Winchester Street station to be converted to self-service sometime in the future. Because the portion of the site devoted the gasoline service station is tight, the Planning Department believes that the gasoline station use, with the modifications to the site, is only appropriate when operated as a full-service station. ***Prior to the Working Session, the Planning Department recommends that the petitioner reduce the size of the proposed canopy such that it provide the desired shelter for employees, but will not be so large as to encourage the current or any future owners to consider converting this site to a self-service station.***

2. The use as developed and operated will not adversely affect the neighborhood

Given the size and the proposed lighting levels, the Planning Department believes that the canopy ***will adversely affect*** the neighborhood. Adjacent to the subject site, at 38-44 Winchester St., is a residential structure classified in the assessor's database as a three-family dwelling. The size and height of the canopy will adversely impact the second floor of this three-family dwelling, and the Lighting Proposal Plan shows that light levels over 0.0 footcandles at the lot line. The high level of lighting within the canopy will make the canopy glaringly apparent to the residents at 38-44 Winchester St. and those across Winchester Street, on Curtis Street, as well as to drivers traveling along Winchester Street. Given the size of the structure and the amount of light spillover across the front property line, the canopy will be highly visible to both adjacent properties and passing motorists.

The Planning Department does not believe that the waiver from the prohibition on light spillage, as currently proposed, is appropriate at this site. The spillover onto Winchester Street ranges from 5.4 to 11.2 footcandles. ***Prior to the Working Session, the Planning Department recommends that the petitioner provide a revised lighting plan that reduces the light spillage at the property lines. Further, the Planning Department recommends that if this petition is approved, that the Board consider a condition that would restrict the hours when the canopy can be lit. The Planning Department would***

recommend that the canopy lights should be in use only from dusk to the closing of the station (which is 10:00 PM daily). Further, to reduce the adverse visual impacts on the abutting neighbors, the Planning Department recommends that the size of the canopy be reduced significantly.

3. There will be no nuisance or serious hazard to vehicles or pedestrians

As proposed, the canopy should not cause a nuisance or serious hazard to vehicles or pedestrians. If, however, the gas station is converted from full-serve to self-serve, there is the potential for serious hazard to both vehicles and pedestrians. The Planning Department believes that reducing the size of the canopy may discourage this or any future owners from considering such a change in operation.

The system used for refueling the gas pumps came about because of the size of the re-fueling tankers. The greatest potential hazard occurs when the truck stops on Winchester Street and blocks the traffic while it swings and turns backwards into the site. The rear of the truck sits in the adjacent “pass-through” and parks with the cab facing Winchester Street. The timing of the deliveries also is important. Arrivals outside of store business hours are preferable, so that there are few or no customers moving their cars or walking into shops, and outside of times of high traffic on Winchester Street. Though the petitioner states that to his knowledge, there have been no accidents related to deliveries since 1981, the Board should consider a condition that regulates delivery times.

Although the City’s Transportation Planner sees no issues with this request to amend the site plan as long as deliveries continue to be made outside of normal business hours, *the City Traffic Engineer is expected to provide further comments on this petition prior to the close of the public hearing.*

The Fire Department reviewed the petitioner’s plans, and date stamped them as “**Reviewed and Accepted**” on February 20, 2005.

VII. SUMMARY

With the exception of the canopy and the proposed additional landscaping, the petitioner already made changes to the site layout to create the pass-through for the larger tanker trucks, and is now seeking to legalize the existing conditions. The request for waivers to the parking lot design standards is a result of the small size of the existing gas station site and the much large size of the re-fueling trucks. The small size of the existing gas station site is also what causes the canopy to appear excessively large for the stated purpose, and overlit for the neighborhood. While the canopy may be of a standard size to cover the three pumps plus vehicles, in this case it appears to overwhelm the site.

Prior to the working session, the Planning Department recommends that the petitioner:

1. Submit revised plans with the canopy size reduced; and
2. Submit a revised photometric plan which decreases the light levels and eliminates the spillover onto the public way along Winchester Street

ATTACHMENTS

ATTACHMENT A: BOARD ORDER #420-87

ATTACHMENT B: ZONING REVIEW MEMORANDUM

ATTACHMENT C: PORTION OF 25% DESIGN PLANS FOR WINCHESTER STREET